IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.983 OF 2006
IN
CRIMINAL APPEAL NO.858 OF 2006

Jaysing Maruti Patil ...Applicant

vs.

The State of Maharashtra ...Respondent

Mr.Shekhar Ingawale for the Applicant
Mr.D.P.Adsule, A.P.P. for State

CORAM: A.S.OKA,J.
DATE : DECEMBER 1,2006.

P.C.:

1. The submissions of the Advocates appearing for the parties were heard on the last date. The conviction of the Applicant is for the offence under section 376 of the Indian Penal Code and the substantive sentence is R.I. for seven years and fine of Rs.500/-.

2. The learned Advocate for the Applicant pointed out various discrepancies in the prosecution case. He pointed out that it is doubtful whether the blood sample sent for the D.N.A. test was of the Applicant. The entire version of the prosecutrix is doubtful considering the unexplained and inordinate delay in filing the F.I.R. He placed reliance on the certificate issued by the Medical Officer which discloses that the age of the prosecutrix was above 17 years but less than 19 years. He submitted that the entry of the birth date in the school record is based only on the oral information given by the

parents of the prosecutrix. The learned A.P.P. submitted that apart from the fact the birth date in the school record has to be accepted as a primary evidence of the birth date, this is a case where D.N.A. test report indicates that the Applicant is the father of the child born to the prosecutrix. He submitted that the entry of date of birth in the school record shows that the age of the prosecutrix was below 16 years at the time of the commission of offence. He submitted that the evidence of D.N.A. test is clinching piece of evidence. Hence, the Applicant is disentitled to bail.

3. It must be noted here that the Applicant was in custody from 4th March 2005 till 8th May 2005 on which date he was enlarged on bail. Till conclusion of the trial the Applicant was on bail and there is no allegation as regards misuse of the liberty granted to him.

4. I have perused the impugned Judgment and notes of evidence and other relevant documents. The prosecutrix delivered a child on 1st March 2005. The allegation of the prosecution is that after the child was delivered, the prosecutrix threw the child in open court yard. The F.I.R. was registered on 4th March 2005. The explanation for delay in filing the F.I.R. of the prosecutrix appears to be that she did not realise that she was pregnant. The prosecution is relying on the report of D.N.A. test which shows that the Applicant is the father of

the child which was born to the prosecutrix. The learned Counsel for the Applicant has invited my attention to the evidence on record regarding collection of the blood sample of the Applicant. There is a prescribed format for collection of the blood sample. The prescribed format is consisting of two parts. The first part is regarding identification which contains the photograph, the name and address of the person whose sample is collected and details of the crime for which the sample is collected. The second part contains a declaration by donor (guardian in case of minor). The declaration is as regards consent given for supplying the sample to the Forensic Science Laboratory. It also contains declaration that the donor has not undergone blood transfusion within last three months. Such form duly filled in with the date of sample and signature of the prosecutrix is produced on record and has been exhibited. The form of the Applicant is also produced on record and is also exhibited. Surprisingly, in the first part where the date of collection of sample is to be written, the only figure mentioned therein is ‘28’. The second surprising aspect is that the declaration which is part of the same format does not bear the signature of the Applicant. This fact is very significant as even according to the case of the prosecution, the blood sample of the Applicant has been allegedly collected when the Applicant was in custody.

5. My attention has also been invited to the evidence of P.W.No.7 Dr.Anita Ramesh Shah who has allegedly collected the blood sample of the Applicant. In the cross examination, she admitted that she has not mentioned the date of collection of the blood in the prescribed format. She admitted that it is mandatory to note the date of collection of blood sample. She also admitted that it is mandatory to obtain the signature of the donor of the blood sample on the prescribed format. She admitted that she did not obtain the signature of the donor. The learned A.P.P. submitted that the said witness identified the Applicant. The said submission prima facie does not appear to be correct. The witness stated in the cross examination that she cannot identify the person whose blood sample has been collected by her. She further stated after perusing the photograph on the format that the person who was present in the Court is the same person whose blood was collected. She identified the applicant on the basis of the photograph which was affixed to the format. Thus, prima facie, the collection of the blood sample of the applicant itself becomes suspicious and doubtful. All these aspects have to be considered in the light of the fact that the F.I.R. was lodged after the prosecutrix delivered a child and after it was found that the prosecutrix had thrown the child in the open court yard. The radiological examination shows that the age of the prosecutrix was between 17 to 19 years. The deposition of the Head Master of the school prima facie shows

that the entry of date of birth in the school record is based only on the oral statement made by the parent of the prosecutrix.

6. The Applicant was on bail till the conclusion of the trial from August 2005.

7. Considering the aforesaid aspects, a case is made out for enlarging the Applicant on bail subject to stringent conditions.

8. Hence, Application is disposed of by passing the following order :

i) The Applicant shall be enlarged on the same bail on which he was enlarged during the pendency of the trial subject to filing fresh bail bonds.

ii) Bail is granted subject to condition that till the disposal of the Appeal, the Applicant will not enter village Patane, Taluka Shahuwadi, District Kolhapur.

iii) The order granting bail will be given effect only after the Applicant furnishes complete address of place of residence where he proposes to stay after he is enlarged on bail.

iv) Bail is granted subject to condition that the Applicant will report to Shahuwadi Police Station on first Saturday of every calender month till the disposal of the Appeal.

JUDGE